IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC.CIVIL APPLICATION NO. 97 OF 2004

Sou.Subhangi Praveen Sutar. ... Petitioner.

Versus.

Praveen Vishnu Sutar. ... Respondent.

Shri Uday Warunjikar for the Petitioner.

Ms.Smita Telang for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 3rd May, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. The Applicant is the wife and the Respondent is the husband. The Applicant-wife has filed a petition for restitution of conjugal rights against the Respondent which is pending in the Court of the Civil Judge, Senior Division at Satara. The Applicant is the resident at village Atit, Taluka and District Satara. The Respondent is a resident of Mumbai. The Respondent has filed a petition for divorce against the Applicant which is pending in the Family Court at Mumbai. This Application is for transfer of the petition filed by the Respondent to the Court of the Civil Judge, Senior Division at Satara. The ground pleaded in the application for transfer is that the Applicant is residing at village Atit, Taluka & Dist. Satara and the Applicant is having a custody of minor child. The case is that the Applicant finds it very difficult to attend

the Family Court at Mumbai. It is stated that the age of the minor child is only 16 to 17 months. It is also stated that the Respondent is a businessman and therefore, it will be possible for him to attend the Court at Satara.

2. This Application is opposed by the Respondent by filing a reply. Various contentions have been raised in the reply. One of the contentions is that the Applicant's father is having high political clout and is known to be a powerful and influential man in the village Atit, Taluka & Dist.Satara. It is stated that it will not be possible for the Respondent to attend the Court at Satara considering the influence weilded by the father of the Applicant. It is submitted that if the matter remains pending in the Family Court there is every possibility of the dispute being resolved by the ADR. It is submitted that the Court at Satara does not have the infrastructure which is possessed by the Family Court.

3. I have considered the rival submissions. There cannot be any dispute that the petition filed by the Petitioner for restitution of the conjugal rights and the petition filed by the Respondent for divorce will have to be heard by one and the same Court. The Respondent is already facing petition for restitution of conjugal rights which is pending in the Court at Satara.

The Respondent has not applied for transfer of the said petition to the Family Court at Bandra.

4. The Applicant is the resident of village Atit, Taluka and District Satara. It is not in dispute that the minor child is only 16 to 17 months old. It is well settled position that in the matters like this, the convenience of the wife is to be seen.

5. The Respondent is contesting the petition filed by the wife in the Court at Satara. Therefore, even if the petition filed by him is transferred to the Court at Satara, there will not be any prejudice. If the father of the Petitioner creates any difficulty for the Respondent, it is always open for the Respondent to take out appropriate proceedings in accordance with the law.

6. The Court of the Civil Judge, Senior Division, is vested with the jurisdiction to hear and decide the petitions under the Hindu Marriage Act, 1955. Section 89 of the Code of Civil Procedure, 1908 is also applicable to the said Court. The said Court is also bound to make efforts for amicable settlement between the parties. Therefore, there is no substance in the contention of the Respondent that the said Court at Satara does not have infrastructure to deal with the petition for divorce filed by the Respondent. The said contention is totally misconceived and deserves to be

rejected.

7. Hence a case of transfer is made out. Accordingly the Application is allowed in terms of prayer clause (a). The learned District Judge, Satara, will ensure that the petitions filed by both the parties are assigned to one and the same Court for hearing and deciding the same together.

8. The parties and the Courts below to act on authenticated copy of this order.

Judge.